

**MINUTES  
of the  
WATER AND NATURAL RESOURCES COMMITTEE  
and the  
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 4-6, 2008  
NMSU Golf Course Club House  
3000 Herb Wimberly Drive  
Las Cruces**

The joint meeting of the Water and Natural Resources Committee (WNRC) and the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Andy Nuñez, chair, at 8:12 a.m. on Monday, August 4, 2008, at the New Mexico State University (NMSU) Golf Course Club House in Las Cruces.

**Water and Natural Resources Committee**

**Present**

Rep. Andy Nuñez, Chair  
Rep. Paul C. Bandy  
Rep. Elias Barela  
Rep. Ray Begaye  
Rep. Joseph Cervantes  
Sen. Mary Jane M. Garcia  
Rep. Dona G. Irwin (Aug. 5)  
Rep. Larry A. Larrañaga  
Rep. Kathy A. McCoy  
Sen. Steven P. Neville  
Sen. Mary Kay Papen  
Rep. Don L. Tripp

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Anna M. Crook  
Rep. Nora Espinoza (Aug. 4)  
Rep. Candy Spence Ezzell  
Sen. Gay G. Kernan  
Sen. Cisco McSorley  
Sen. Leonard Lee Rawson (Aug. 5)  
Rep. Henry Kiki Saavedra  
Rep. Peter Wirth

**Absent**

Sen. Phil A. Griego, Vice Chair  
Sen. Sue Wilson Beffort  
Sen. Dede Feldman  
Sen. Clinton D. Harden, Jr.  
Sen. Cynthia Nava  
Rep. Mimi Stewart

Sen. Rod Adair  
Sen. Vernon D. Asbill  
Sen. Timothy Z. Jennings  
Rep. Ben Lujan  
Rep. James Roger Madalena  
Rep. Danice Picraux  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Rep. James R.J. Strickler  
Rep. Eric A. Youngberg

## **Courts, Corrections and Justice Committee**

### **Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Al Park, Co-Chair (Aug. 4-5)  
Sen. Rod Adair (Aug. 6)  
Rep. Thomas A. Anderson  
Rep. Joseph Cervantes  
Sen. Carroll H. Leavell  
Rep. Antonio "Moe" Maestas (Aug. 5)  
Sen. Richard C. Martinez (Aug. 5-6)  
Rep. William "Bill" R. Rehm  
Rep. Peter Wirth

### **Advisory Members**

Rep. Elias Barela  
Sen. Mary Jane M. Garcia (Aug. 4-5)  
Sen. Gay G. Kernan  
Sen. Linda M. Lopez (Aug. 5)  
Rep. Jane E. Powdrell-Culbert (Aug. 5-6)

### **Absent**

Rep. Gail Chasey  
Sen. Clinton D. Harden, Jr.  
Sen. Lidio G. Rainaldi  
Rep. Eric A. Youngberg

Sen. Kent L. Cravens  
Rep. Daniel R. Foley  
Sen. John T.L. Grubestic  
Rep. W. Ken Martinez  
Sen. William H. Payne  
Sen. John C. Ryan  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton  
Rep. Thomas E. Swisstack  
Sen. James G. Taylor  
Rep. Teresa A. Zanetti

(Attendance dates for WNRC members are noted for members not present for the entire joint meeting. Attendance dates for CCJ members are noted for members not present for the entire three-day meeting.)

### **Staff**

Jon Boller  
Jeret Fleetwood  
Maha Khoury  
Gordon Meeks  
Aldis Philipbar

### **Guest Legislators**

Rep. Nathan P. Cote (Aug. 4 — joint meeting)  
Rep. Anna M. Crook (Aug. 6 — CCJ meeting)  
Rep. Candy Spence Ezzell (Aug. 6 — CCJ meeting)

### **Guests**

The guest list is in the original meeting file.

### **Monday, August 4**

Waded Cruzado-Salas, interim president, NMSU, welcomed the committee to NMSU and thanked the members for coming.

### **Alamogordo Desalination Project**

Karl Wood, director of the Water Resources Research Institute at NMSU, provided the committee with an update regarding desalination technology. He explained that water problems in New Mexico fall into one of four categories: it is available in the wrong place, at the wrong time or in the wrong quantity, or it is of poor quality. Dr. Wood went on to explain that while there are significant ground water resources beneath New Mexico, the water is of particularly poor quality. He noted that one way of taking advantage of those resources is through desalination. Dr. Wood pointed out that trying to make use of brackish water resources is not a problem unique to New Mexico and discussed the various challenges associated with desalination, such as energy requirements, scale buildup on filters and, most of all, disposal of the leftover concentrate.

Dr. Wood went on to explain that a federally funded program to study desalination technology has been established in Tularosa. He went on to provide the committee with some of the features of the facility built to house the program, including testing areas, bench-scale system testing, a laboratory, chemical storage facilities and renewable energy as a partial power source. However, Dr. Wood pointed out that the facility is still not operational.

Finally, Dr. Wood noted that not all of New Mexico's water problems will be solved through desalination and discussed several of the water-related study programs being conducted at NMSU. For example, Dr. Wood indicated that there are hydrogeology, surface-to-ground water interaction, irrigation efficiency and water and wastewater treatment programs available at NMSU.

Questions and comments included:

- money granted to Lea County for research on produced water;
- late summer rainfall as an example of water being available at the wrong time;
- whether the costs associated with desalination make it unattractive as a municipal water source;
- how much more federal money is required to make the Tularosa facility operational;
- reverse osmosis is the technology of choice for desalination;
- possibility of New Mexico purchasing water from a desalination plant operating in El Paso, Texas; and
- deep injection wells operating in Texas along the New Mexico border.

## **Food Security and Farm Sustainability**

Jeff White, College of Agriculture, NMSU, provided the committee with testimony regarding the recent outbreak of salmonella and its suspected origin in jalapenos grown in Mexico. He pointed out that although New Mexico had not even harvested its jalapenos, many buyers may shy away from New Mexico products, which could have a tremendous impact on New Mexico's agricultural economy.

Mr. White went on to discuss the training and exercises that the College of Agriculture undergoes to help ensure that New Mexico's food is safe. He did point out, however, that recent federal Department of Homeland Security regulations concerning the registration of chemicals, including those used by farmers, could pose problems for the agricultural industry.

Janet Jarratt, a dairy farmer, explained that food security issues cover a wide range of topics, including availability. She explained that as land use trends continue to move toward the gentrification of farmland, many farmers, particularly small-scale ones, are being squeezed out of business. Ms. Jarratt went on to note that water issues are closely tied to agriculture and the issue of food availability. She pointed out that constant transfers of water rights, and their purpose, puts increased pressure on farmers. She also cautioned the committee to examine the ability of municipalities to condemn water rights. Ms. Jarratt went on to indicate that while there is a movement afoot to highlight locally grown produce, farmers' markets are simply not a viable means of distributing produce to the public. She also suggested that one way of getting more value out of agricultural products is to create regional brands, such as marketing chile grown in Hatch.

Edward Avalos, New Mexico Department of Agriculture, provided the committee with testimony regarding the various ways the state can aid local farmers in marketing their products. For example, he noted that international marketing strategies have helped New Mexico farmers and ranchers sell their products to China, Mexico and several other nations. Mr. Avalos also noted that label and marketing assistance, particularly the "Taste the Tradition" label, helps to brand products as produced in New Mexico. He also discussed how trade show, commodity and retail promotions conducted by the New Mexico Department of Agriculture can help New Mexico farmers and ranchers sell their products.

Questions and comments included:

- salmonella issues;
- the possibility of New Mexico losing its bovine tuberculosis-free designation;
- mixed effects of NAFTA on New Mexico's agricultural economy;
- regulatory barriers confronting farmers and ranchers;
- the source of funding for the "Taste the Tradition" label promotion;
- the power of the Bernalillo County/Albuquerque Water Utility Authority to condemn water rights in New Mexico; and
- the potentially devastating effects of the salmonella outbreak on New Mexico's agricultural economy.

## **Why Water Rights Adjudications Are Important**

Former Representative Joe M Stell provided the committee with testimony regarding the history of water rights in New Mexico, explaining that the prior appropriation doctrine has roots in Spain and North Africa. He went on to discuss the effects of the Treaty of Guadalupe Hidalgo on water rights, pointing out that it was that treaty that tied water rights to property rights. Representative Stell went on to note that there are basically two kinds of water rights in New Mexico: pre-1907 and post-1907. He also discussed the relationship between ground water and surface water, and how that relationship came to be understood in New Mexico.

Representative Stell also discussed the recent court case concerning the Mimbres River and its potential effect on the future of water rights in New Mexico. He also discussed the fact that there are several rivers in the state that have not been fully adjudicated, including the Rio Grande. Representative Stell emphasized that completing those adjudications is important, because trying to administer water rights without a thorough understanding of how much water each user is entitled to is similar to spending money without really knowing how much money is available in the bank account.

Tom Turney, former state engineer, also provided the committee with testimony regarding the importance of water rights adjudications. He began by explaining that the state has a finite amount of water in the state, and that it is the state engineer's job to administer water rights in the state. Mr. Turney also explained that the tools available to the engineer to administer those water rights are licenses and adjudications. He highlighted the benefits of adjudications, particularly that they allow the engineer to adhere to the constitution and that they provide certainty to water users. He also provided the committee with a brief history of adjudications in the state and an overview of the ongoing ones and the issues associated with them.

Questions and comments included:

- whether the courts have adequate funding to carry adjudications out;
- whether separate courts dedicated to adjudications along the middle Rio Grande would work;
- the status of the silvery minnow;
- the use of claims-based adjudications in other states;
- why a lack of pressure to adjudicate makes adjudications take such a long time to complete;
- compact delivery issues;
- Native American water issues and their effect on adjudications; and
- the possibility of dedicating money for adjudications at the upcoming special legislative session.

### **AOC-OSE Work Group Status Report**

Celina Jones, Administrative Office of the Courts (AOC), provided the committee with an update on the progress of the work group made up of representatives of the AOC and the Office of the State Engineer (OSE) who are tasked with improving the adjudications process. She explained that while it is unlikely that large changes will be made to the process, some

changes to streamline the process will probably occur. Ms. Jones indicated that the work group has had meetings with representatives from other states, and the meetings have been particularly helpful. She did caution, though, that keeping the adjudication process moving forward will require recurring funding.

Bill Hume, Office of the Governor, also updated the committee on the work group's progress. He indicated that while the work group still has some work to do, it is nearly finished and will issue a report detailing its work and will present that report to both the executive and the legislature.

Questions and comments included:

- why it may be necessary to re-adjudicate some areas;
- number of disputed claims along the middle Rio Grande;
- representation of special river masters on the work group;
- competition among water court judges and other judges for funding from the legislature; and
- whether water courts have a special line item in the unified judiciary budget.

### **Texas Litigation: Status of Appropriation**

Frances Bassett, Office of the Attorney General, provided the committee with an update regarding money the legislature appropriated to defend New Mexico against threatened litigation by the State of Texas on the Rio Grande. She began by explaining that Texas claims that New Mexico has violated the Rio Grande Compact in two ways: first by depleting surface flows and then by delivering overly salinated water to Texas. Ms. Bassett then detailed the steps New Mexico has taken to address those claims, beginning with drilling wells equipped with monitoring devices that detect the effects of ground water pumping and water quality.

Ms. Bassett went on to note that still more money had been spent on development of a ground water computer model, which also took four years to complete. She emphasized that, for the time being, the efforts undertaken to this point have averted a potentially costly lawsuit. Ms. Bassett also noted that Texas's claims regarding New Mexico farmers increasing the salinity levels of the river have been refuted. However, Ms. Bassett cautioned that an agreement between the Elephant Butte Irrigation District and its El Paso counterpart, which helped avert any lawsuit with Texas, could have long-term ramifications for the region.

John Draper, a water rights attorney with Montgomery and Andrews, discussed several other interstate lawsuits over water and how they could affect New Mexico. He explained that each of the cases he has worked on has cost the losing state millions of dollars. Mr. Draper noted that although none of those cases translates exactly to New Mexico's situation, there are similarities in that they all involve upstream states underdelivering water to downstream ones by curtailing surface flows. He emphasized that New Mexico should endeavor to avoid this type of lawsuit.

### **Pre-1907 Water Rights Status and Acequia Adjudications**

Richard Trujillo and Hilario Rubio, both of the OSE, provided the committee with testimony regarding the OSE's communication plan, which is designed to improve communication between northern New Mexico water stakeholders and the OSE during the adjudication process. They explained that the plan was developed during the adjudication of the Rio Gallinas to help keep the lines of communication open between claimants and the OSE. Mr. Trujillo and Mr. Rubio outlined the core messages of the communication plan, which include fairness, an emphasis on the increasing demand for water resources and their decreasing availability and the notion that there is no simple solution to the problem of water availability.

Mr. Trujillo and Mr. Rubio explained that there is an element of mistrust among acequia users toward the OSE and that the communication plan is, in part, an attempt to address that. They noted that the adjudication on the Rio Gallinas went well and that the development of a line of communication between stakeholders and the OSE probably helped.

Questions and comments included:

- development of a procedural order by the OSE that reflects the successes experienced on the Rio Gallinas;
- a shift in focus by the OSE to smaller geographic areas for adjudications;
- success of the OSE field office in keeping lines of communication open throughout the adjudication process;
- whether any statutory changes are necessary to help the OSE implement the communication plan and field office approach; and
- source of historical data used by the OSE.

Tessa Davidson, Rio Grande Water Rights Association (RGWRA), provided the committee with testimony regarding the makeup and history of the RGWRA and issues related to the OSE's administration of water along the Rio Grande. She explained that the RGWRA is a grass-roots group of water users along the middle Rio Grande.

### **The Role of Ombudsman and Intervenors in Water Adjudications**

Darcy Bushnell, director of the Joe M Stell Ombudsman Program at the Utton Transboundary Center at the University of New Mexico Law School, provided the committee with an overview of the ombudsman program, its past work and its ongoing needs. She began by noting that the program began as a pilot program in 2005 to ensure continued service to the water rights adjudication community. Ms. Bushnell went on to discuss the services provided by the program, including outreach, toll-free phone help lines, a detailed web site and instructional DVDs. She went on to note the work the program has done to aid claimants on the Rio Grande and San Juan rivers, the Nambe-Pojoaque-Tesuque area (for the *Aamodt* settlement), the Zuni and Jemez basins and the Rio Gallinas. Finally, Ms. Bushnell emphasized that the program is composed of a relatively small staff whose needs are quickly outgrowing their resources.

Questions and comments included:

- funding needs for the program and the Utton center;

- work the program has done on adjudications in Lea and Curry counties; and
- that the program is currently funded with nonrecurring revenue.

## **Tuesday, August 5**

### **Gila River Planning**

Allison Williams, Interstate Stream Commission (ISC), provided the committee with an update regarding the planning process for the Arizona Water Rights Settlement and the Gila River. She reminded the committee about the parameters of the settlement, which dictate that New Mexico must have a plan in place by 2012 regarding any water project along the Gila before the state can begin receiving federal funding from the settlement. She also reviewed the makeup of the stakeholder group that must begin developing such a plan and noted that several studies are currently being conducted by the stakeholder group to ensure that the best possible science is available to the stakeholders. She also noted that the stakeholder group has hired a public outreach employee to ensure that the public is adequately notified of any meetings or developments.

Adrian Oglesby, Nature Conservancy, also discussed the work of the stakeholder group, noting that some disagreement still exists among stakeholders about exactly what the desired future condition of the river is. He also acknowledged that any public planning process generally moves slowly, and that this one is no different. Mr. Oglesby went on to note that, in addition to a public relations person, the stakeholder group has also employed an information contractor to help organize the information and studies already gathered by the group.

Howard Hutchinson, Gila/San Francisco Study Group, echoed Mr. Oglesby's comments, explaining that the information contractor would help to determine the studies the stakeholder group had already requested to get a better understanding of the questions that still need to be answered.

Estevan Lopez, director of the ISC, reviewed the 2004 Arizona Water Rights Settlement Act, explaining that New Mexico receives both the right to develop some of the water on the Gila River and at least \$66 million in federal funding to do so. He pointed out that New Mexico does not need to develop a project, but that if the state does decide to do that, it must have a plan in place by 2012. Mr. Lopez noted that a project could be construed as any diversion of water along the Gila. He also acknowledged that a number of people are concerned about moving forward with any type of dam or diversion on the Gila.

Questions and comments included:

- the timetable for making a decision about whether or not to proceed with a project on the Gila;
- there is no requirement that New Mexico make use of any of the water offered to it under the settlement;
- the Consumptive Use and Forbearance Agreement dictates that New Mexico may only receive water during peak flows, so there is a potential need to store water if the state wishes to use it;



- the definition of a stakeholder;
- the nearest dam on the Gila River is 60 miles past the Arizona/New Mexico border;
- the desire of the executive to have the best possible science available before any kind of decision is made;
- the value of the water that would go to Arizona if New Mexico fails to use it somehow;
- the location of stakeholder meetings and notification for them;
- Endangered Species Act issues on the Gila River; and
- average and peak flows of the Gila River.

### **Domestic Well Legal Status**

Mr. Hume provided the committee with a basic overview of the issues involved in a recent court case concerning domestic wells. He explained that the statute governing domestic wells allowed the OSE to issue permits for domestic wells. However, a senior water rights holder on the Mimbres River sued on the grounds that the domestic wells statute is unconstitutional in that it curtails senior water rights holders. Mr. Hume indicated that a district court and then the court of appeals ruled in favor of senior water rights holders. He pointed out that the OSE has attempted to address the issue of domestic wells through various other means, such as the Active Water Resource Management (AWRM) regulations, the promulgation of domestic well rules and declaring certain areas of the state as domestic well management areas. However, Mr. Hume pointed out that the AWRM regulations were challenged in court almost immediately. He also indicated that the OSE would likely appeal the court of appeals decision because the issue is of statewide importance and also because appealing would probably give the legislature time to address the issue. Mr. Hume acknowledged that it could be time to develop a new approach to domestic wells.

Steve Hernandez, the attorney representing senior water rights holders in the court case involving domestic wells, explained that the continued issuance of domestic well permits by the OSE will cause problems for water rights holders on the Pecos River and the Rio Grande, although he pointed out that there will likely be fewer problems in other areas of the state. He went on to note that while the state engineer has tried to manage domestic wells, his clients simply could not wait for their water rights to be impaired and took their case to court. Mr. Hernandez indicated that he felt that the reluctance of the state engineer to issue a priority call was probably a dereliction of duty. He went on to note that the decision in the case should hold up to further appeal. He finished by stating that there is a pressing need for water rights stakeholders and the OSE to develop an approach to the issue of domestic wells that addresses the problems yet ensures due process.

Questions and comments included:

- how a priority call by the state engineer would actually bring the domestic well statute back into compliance with the constitution;
- the status of adjudications on the Mimbres River and the Rio Grande;
- the number of new domestic wells drilled each year;
- allowing the OSE to issue well permits only when there is no other option;

- involvement of the legislature in any kind of plan to address the domestic well issue; and
- whether the OSE is still issuing well permits in the Sixth Judicial District (where the domestic well court case was originally heard).

### **Lower Rio Grande Adjudication Status Report**

Judge Gerald A. Valentine, Third Judicial District, provided the WNRC with an update regarding the work his court is doing to adjudicate the water rights of the state. He presented the committee with statistics showing the overall number of existing subfiles, the number of cases with offers of judgments, the total number of claimants and the number of claimants joined. Judge Valentine also provided the committee with breakdowns by basin of those same statistics. He pointed out that almost all of the water rights claimants in the lower Rio Grande have been joined.

Judge Valentine went on to indicate that court personnel and OSE staff have been working together with representatives from other states, particularly Idaho, to identify efficient adjudication procedures that New Mexico can adopt. He also provided the committee with a preliminary list of suggestions that might help streamline the adjudication process. Judge Valentine's suggestions included maintaining online deed records, exploring the importance of hydrographic surveys and further study of the claims-based adjudication process that several other states employ.

Questions and comments included:

- use of the ombudsman program to mediate adjudications claims;
- the possibility of appropriating additional money for adjudications at the planned special legislative session;
- funding and staffing needs of the ombudsman program; and
- the possibility of drafting legislation based on Judge Valentine's suggestion for endorsement by the WNRC.

### **Elephant Butte/El Paso Water District Settlement**

Gary Esslinger, manager of the Elephant Butte Irrigation District (EBID), provided the committee with testimony regarding the settlement reached between the EBID and El Paso Water Improvement District Number 1. He explained that the settlement, which divides water between New Mexico and Texas, was signed on February 14, 2008. Mr. Esslinger went on to discuss several key points of the settlement, such as that it:

- ties Texas's water allocation to storage levels in Elephant Butte and Caballo reservoirs;
- protects both Texas and Mexico from the impacts of ground water pumping in New Mexico;
- eliminates the threat of litigation between New Mexico and Texas over ground water pumping;
- provides New Mexico flexibility to conjunctively manage its surface and ground water without outside interference;

- costs New Mexico nothing; and
- allows New Mexico to capture and use, store or recharge to the aquifer any storm water without changing allocations to Texas or Mexico.

Mr. Esslinger also discussed the poor condition of the lower Rio Grande's flood control infrastructure and provided the committee with an overview of the various functions that the EBID performs.

The WNRC adjourned at 12:30 p.m.

### **Call to Order**

The CCJ meeting was called to order by Senator McSorley, co-chair.

### **Juvenile Justice Reforms — Recent Efforts and Future Planning: The Missouri Model and Juvenile Facilities**

Dorian Dodson, secretary of children, youth and families, began by introducing Children, Youth and Families Department (CYFD) staff members that had accompanied her to Las Cruces. Secretary Dodson reviewed the status of current juvenile justice facilities, stating that most were located along the Rio Grande corridor and in Albuquerque. She said that most juvenile offenders in the facilities are over 17 years old and more programs are needed that are specifically geared toward this age group. She said that about 10 percent of incarcerated juveniles are female, and there is an over-representation of minorities that is inconsistent with the demographics in the state. She added that the majority of incarcerated juveniles are high-risk and high-need. Secretary Dodson discussed the importance of smaller facilities and dorm-style rooms as used under the Missouri Model. She highlighted the short-term goals of the juvenile justice facilities, including implementing a unit management approach in all facilities and conducting 15-day diagnostic evaluations in detention settings statewide. She also discussed long-term goals with regards to Cambiar New Mexico (New Mexico's name for the Missouri Model), including shifting program emphasis from confinement and punishment to rehabilitation and restorative justice and establishing front-end and after-care transition services. She went on to state that the Cambiar New Mexico education plan requires individual education plans for all residents and maintains a standards-based curriculum consistent with the Public Education Department. She said the Cambiar facilities promote a positive peer culture and include specialized services.

Secretary Dodson and Debra Pritchard, director of juvenile justice services, CYFD, then discussed issues and answered questions from the committee.

### **Tour of the J. Paul Taylor Center**

Committee and staff were taken on a tour of the J. Paul Taylor Center, a juvenile justice facility located outside of Las Cruces, by Secretary Dodson and CYFD staff.

### **Wednesday, August 6**

### **Report from the Attorney General's Animal Cruelty Task Force: Legislative Proposals**

Steve Suttle, special counsel, Office of the Attorney General, described the work of the task force as a crusade. He said that the Office of the Attorney General is limited by statute in its ability to prosecute animal cruelty cases, so it works with local district attorneys. He said that the task force and law enforcement have been active in this field and helped rescue a number of pit bulls in Chaparral and arrested two brothers in connection with dog fighting. He said that they also broke up a cockfighting ring in Anthony. However, the roosters in that case were so badly damaged that they had to be euthanized. In December, they raided a "cockfight holiday weekend", and, in June, they raided a cockfight on the West Mesa in Albuquerque. Mr. Suttle said that the misdemeanor designation for cockfighting limits prosecution.

Heather Ferguson, legislative director, Animal Protection of New Mexico and Animal Protection Voters, said that the task force has allowed her groups to work on-the-ground. She requested that the reptile exemption be removed from the animal cruelty statute and briefly went over the proposed legislation on animal cruelty. Ms. Ferguson then invited several guests in the audience to speak of their experiences with animal cruelty cases.

Robin Boykivich, investigator, Dona Ana Sheriff's Department, discussed a case involving reptiles in which two boys broke into a reptile shelter and stabbed and killed 24 reptiles. She said they could not be prosecuted under the current animal cruelty statute due to the reptile exemption. She also discussed issues related to the abandonment of animals.

Todd Garrison, sheriff of Dona Ana County, said there is a high cost associated with caring for and maintaining animals taken into custody in animal cruelty cases. He added that the sheriff's office has reached out to other areas to lend their expertise in animal cruelty cases. Miles Culbertson of the New Mexico Livestock Board joined the panel and discussed livestock issues and how Section 30-18-1 NMSA 1978 is used for prosecuting cruelty to livestock as well as other animals.

Jack Fisher, board member of Horse Shelter in Cerrillos, said that the shelter is located on 300 acres and currently houses 40 horses and two foals. He said it costs approximately \$3,500 per year per horse and that the New Mexico Livestock Board covers some of the cost, but not all. Ms. Boykivich added that the cost to house a dog is \$15.00 per day, and the cost to house a horse is \$35.00 per day, not including medical treatment. She said that it is a high cost for the county.

The panel then answered questions from the committee.

### **Legislative Proposal on Eyewitness Identification Procedures**

Michael Stout, New Mexico Criminal Defense Lawyers Association, began by stating that 75 percent of convicted offenders exonerated by the Innocence Project were convicted based on eyewitness testimony. He said that the eyewitness identification procedures bill is not an attack on law enforcement. He said that an eyewitness often develops an enhanced memory once the eyewitness has confirming evidence. He called this a human frailty issue as opposed to intentional misconduct. Mr. Stout then quickly reviewed the bill, stating that the critical points

include a double-blind procedure, sequential lineups and recording and documentation.

Henry Valdez, First Judicial District attorney, said that a study was conducted with the Illinois Police Department that showed that sequential lineups were not better than simultaneous lineups and were perhaps worse. However, this study was called into question by experts in the field. Nevertheless, Mr. Valdez said that the Department of Justice is conducting a study on eyewitness identification procedures. Mr. Valdez said that it is not known if the procedures outlined in the bill will be an improvement until the results of the study are back, which should be in about two years.

Mr. Stout and Mr. Valdez then answered questions from the committee.

### **Amenability Hearings for Serious Youthful Offenders**

Anna Gabrielitis, attorney, Juvenile Division, Public Defender Department, said that a small change needs to be made to the Children's Code. This change would require all children facing charges as adults to receive an amenability hearing to determine whether or not the child can be treated as a child or if an adult sanction would be better. She said that the current system is inconsistent in how it treats juveniles. Currently, serious youthful offenders do not have a right to an amenability hearing and the judge has no discretion.

Rory Rank, attorney, Juvenile Division, Public Defender Department, said that currently, a serious youthful offender designation equals an automatic transfer to an adult facility. He said that the charge itself should not preclude an amenability hearing. He said that the child should be given the greatest protection possible.

Mr. Valdez said that the serious youthful offender designation is only given to children who have been charged with first degree murder. He said that in 1993, the legislature determined that this conviction deserved an adult sentence and removed the judge's discretion. Mr. Rank said that the federal government has conducted a study highlighting the problems associated with sending children to an adult facility, including a higher rate of recidivism.

The panel then addressed questions from the committee.

### **Public Comment**

Paul Borunda wanted to know why complaints against law enforcement officers are not accepted by the Department of Public Safety's Law Enforcement Academy or by some other statewide authority. He went over his efforts to require the academy to accept citizen complaints against law enforcement officers. A discussion ensued between Mr. Borunda and members of the committee, and Representative Cervantes suggested that the committee explore this issue when the Department of Public Safety is also present.

There being no further business, the committee adjourned at 1:03 p.m.